IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: March 07, 2007

Parties Name
United India Insurance Co. Ltd. Hisar.
..APPELLANT
VERSUS
Smt. Phoolpati widow of Tek and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. Piyush Bansal,
Advocate, for the appellant.

Mr. Rajesh Khandelwal, Advocate,
for Mr. R.N. Lohan, Advocate, for respondents No. 1 to 6.

Mr. R.K. Chhiber, Senior Advocate, with
Mr. Anand Chhiber, Advocate, for respondent No. 11

Mr. R.S. Kundu, Advocate, for the cross-objectors.

JASBIR SINGH, J. (oral)

JUDGMENT:

This judgment will dispose of F.A.O. No. 729 of 1992, filed by M/s United India Insurance Co. Ltd., Hisar, insurer of truck No. HYR 1725, and also Cross-objections, filed by owner and driver of the four wheeler No. HYJ 7379. For facility of dictating judgment, facts are being mentioned from the appeal, referred to above.

Respondents No. 1 to 6/ claimants filed an application, claiming compensation on account of death of Shri Tek Ram in a motor accident on November 7, 1990. It was their case that Tek Ram deceased had agreed to sell two buffaloes to Madan Lal of Rohtak. He was going in a four wheeler No. HYJ 7379 from village Darodi to Rohtak to deliver those buffaloes. Being owner, the deceased was sitting by the side of the Driver, in the four wheeler. When they reached near village Khatakar, then truck bearing No. HYR 1725, driven by respondent No. 7 and owned by respondent No. 8, came at a fast speed and after coming on the wrong side, hit rear side of the four wheeler, as a result of which Tek Ram received fatal injuries and died thereafter. It was further stated by them that an FIR was got recorded against respondent No. 7 for causing the above said accident. The claimants put up their claim to get compensation against Drivers, Owners and Insurance Companies of the above said two vehicles.

Upon notice, respondents No. 7 and 8, in their written-statement, tried to shift the blame, in causing the accident, upon driver of the four wheeler. It was pleaded by respondent No. 7 that he was driving the truck at a very slow speed and it was Driver of the four wheeler, who, by driving the vehicle in a rash and negligent manner, had hit the front (driver's window) side of his truck. He further stated that he had stopped the truck at a distance of 7 to 9 Karams.

Appellant – Insurance Company took up a stand , in its written-statement, that the Insurance policy was obtained after the accident had occurred and in view of that, the Company was not liable to make payment of any compensation.

On analysis of pleadings of the parties, following issues were

framed by the Tribunal below:

> "1. Whether the accident as alleged in the petition was caused due to rash and negligent driving on the part of driver of truck No. HYR 1725 or of the four wheeler No. HYJ-7379?OPR
>
> 2.Whether the petitioners are entitled to any amount of compensation? If so, how much and from whom? OPP
>
> 3.Relief."

Parties led their evidence. On analysis thereof and after hearing counsel for the parties, the Tribunal below held that the claimants are entitled to get compensation to the tune of Rs. 1,08,000/- along with interest. It was further held that as Drivers of both the vehicles were responsible in causing the accident, so owners of both the vehicles are also liable to make payment of the compensation. With regard to liability of M/S Oriental Insurance Co., respondent No. 11, it was held that as the deceased was travelling in a goods vehicle, the Insurance Company was not liable to make payment of the compensation.

Counsel for the appellant – Insurance Company has vehemently contended that as the Insurance policy was obtained after the accident had occurred, appellant has wrongly been burdened with liability to make payment of the compensation. To say so, he has referred to the contents of the Insurance Policy Ex. R4, wherein it is mentioned that period of liability of the Insurance Company started from 1.50 PM on November 7, 1990. Counsel further contended that to avoid liability to make payment of compensation, policy was obtained after the accident.

This Court is of the view that the argument raised is liable to

be rejected. The Tribunal below has specifically held that the cover note was issued at around 11 AM on November 7, 1990, and as the accident had occurred after 2 O'Clock, the Insurance Company was made liable to make payment of the compensation. In view of the law, as was applicable at that time, the Tribunal below has not referred to the documents(insurance policy), to arrive at the above said conclusion.

With the assistance, rendered by counsel for the parties, this Court has gone through the evidence on record and is of the view that the appellant is liable to make payment of the compensation as held by the Court below. Admittedly, as per document Annexure R-4, liability of the Insurance Company started from 1.50 PM on November 7, 1990. A combined reading of the statements made by PW3, PW4 and RW2 establishes beyond doubt that the accident had occurred positively after 2 PM. PW3 in her statement has specifically stated that after loading the buffaloes in the four wheeler, deceased had left the village at about 2 PM and she received intimation regarding his death at 4 PM. This witness was not even cross-examined by counsel for the appellant to say that the accident had occurred earlier to 2 PM and the Insurance policy was obtained with a view to save liability towards payment of compensation. PW4 is the eye witness to the accident. He has also specifically stated that the accident had occurred at 2 PM. This witness was also not cross-examined by counsel for the appellant to say that the accident occurred prior to 1.50 PM. Even suggestion was not put to the witness in that regard. RW2 , Driver of the truck bearing No. HYR 1725 has also stated that before the accident, vehicle was shown to some agent of the Insurance Company at 7/7.30 AM and assurance was given to supply the cover note at 11 AM, which was

collected by the owner at 12 noon and the same was sent to him through another Driver, when he was available in the Sugar Mill, before he started on journey, during which accident had taken place. This witness has also stated that he left for Narwana from Sugar Mill, Jind, at about 2/2.30 PM and after he covered a distance of 8 to 9 Miles, the accident had occurred. Even this witness was not questioned/ cross-examined to show that the accident had occurred prior to 1.50 PM. Only a vague suggestion was put that the Insurance cover was got issued, with a view to save liability, after the accident had taken place. That suggestion was denied by RW2. In the FIR also, it is mentioned that the accident had occurred at 2/2.30 PM. All these facts clearly indicate that the accident had occurred after issuance of the Insurance policy and as such the appellant cannot shift liability to make payment of the compensation amount.

The next controversy is as to who was responsible in causing the accident in question. Whether it was Driver of truck No. HYR 1725, i.e., respondent No. 7 or Driver of the four wheeler bearing No. HYJ 7379, i.e. Respondent No. 9. The Court below, by making reference to the evidence on record, has observed that both the Drivers were responsible in causing the accident and because of that, liability to pay compensation has been apportioned in the ratio of 50% each. The Tribunal has observed thus in that regard:

> "10. In the claim petition it is pleaded that the truck came on wrong side of the road and thereby hit the side of the four-wheeler with his truck and the accident took place due to rash and negligent and careless driving on the part of the driver of the truck. Drivers and owners of both the vehicles, on the other

hand, have blamed each other for causing the accident. The petitioners have produced only Manphool to prove as to how the accident had taken place, but the statement of Manphool does not prove that the accident was caused due to rash and negligent driving on the part of the driver of the truck alone. In examination-in-chief although he has stated that the accident had taken place because of fault of Balwan truck-wala but in cross-examination he stated that he was unable to say if the fault was of the driver of the truck or of the four wheeler. He has not given any description as to how the accident had taken place except stating that the truck which was coming from the opposite side struck against the Driver's side portion of the four wheeler and it does not prove that the truck driver alone was negligent. The driver of the four wheeler has not appeared in the witness box to explain as to how the accident had been caused. However, Balwan, Driver of the truck, has appeared as RW2. He has stated that the back portion of the four wheeler struck against the window of his truck and that at the time of the accident he was driving the truck at the speed of 20-25 KM per hour. He has also stated that at the time of accident, two wheels of his truck were on Kacha portion of the road as after seeing the four wheeler coming at a fast speed, he had taken his truck on the Kacha portion. From the description, it can be said that the accident was caused when the front portion of the four wheeler had passed the front portion of the truck, i.e., it can be said that the accident occurred as both the vehicles could not

give proper side to each other for passing the vehicles and in such circumstances liability for causing the accident has to be of both the vehicles and, as such, it is held that the drivers of both the vehicles were negligent in causing the accident and negligence is assessed at 50%. This issue is decided accordingly."

This Court is of the view that the finding given above is not justified. Rather the same runs contrary to the evidence on record. It is an admitted fact that regarding the accident in question, FIR was recorded only against driver of truck No. HYR 1725. In the FIR, it was clearly mentioned that it was respondent No. 7, who was responsible in causing the accident. It has also come in evidence that the truck was taken in possession by the police and the same was, thereafter, released on Sapurdari to its owner. It is further established on record that after causing the accident, the truck Driver, along with the truck, ran away from the place and he was arrested from a different place. PW4 Manphool, the eye witness, has clearly stated that he along with the deceased was going from Jind to Rohtak. At about 2 PM, when they reached near village Khatkar , the offending truck came from the opposite side at a high speed and the same was being driven in a rash and negligent manner. The very fact that the truck had hit rear portion of the four wheeler proves that it was driver of the truck, who was responsible in causing the accident. The Tribunal below has placed reliance upon testimony of the Driver of the truck, who appeared as RW2 to say that he was responsible to the extent of 50% only. This Court feels that the Court below has erred by solely placing reliance on the

testimony of that witness. Even if statement of this witness is read in its entirety, it clearly proves that the accident was caused by Driver of the truck. Even if it is believed that the Driver of the truck had diverted the vehicle towards Kacha portion of the road, it is not possible that rear side of the four wheeler would hit front side of the truck. The facts speak for themselves, In view of the fact that the truck had hit the rear portion of the four wheeler, it can safely be said that respondent No. 7 was responsible in causing the accident. It has also come on record that respondent No. 7 raised no objection to his involvement in the criminal case. No criminal proceedings were initiated against driver of the four wheeler.

In view of facts, mentioned above, finding given by the Tribunal below on issue No. 1 stands modified and it is held that only respondent No. 7 was responsible in causing the accident in question.

In view of finding on issue No. 2, Cross Objections deserved to be allowed.

No appeal has been filed by the claimants to enhance the compensation.

In view of findings given above, appeal, filed by the Insurance Company, is dismissed. Cross objections, filed by respondents No. 9 and 10 are allowed and it is held that liability to make payment of compensation is joint and several so far as the appellant and respondents No. 7 and 8 are concerned. It is made clear that if respondents No. 9 and 10 have already paid the compensation amount, with which they were burdened, they will be at liberty to recover the same from the appellant.

March 07, 2007. (Jasbir Singh)
DKC Judge